

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

LUKE M. HUNTON,

Petitioner,

v.

STEPHEN SINCLAIR,

Respondent.

No. CV-06-0054-FVS

ORDER DENYING PETITIONER'S  
MOTION FOR RECONSIDERATION

**THIS MATTER** comes before the Court on Petitioner's motion for reconsideration of order regarding remand. (ECF No. 105). Petitioner is represented by Matthew A. Campbell. Respondent is represented by John Joseph Samson.

**BACKGROUND**

At the time his petition was filed, Petitioner was in custody at the Washington State Penitentiary in Walla Walla, Washington, pursuant to his 2002 Spokane County conviction for second degree robbery. The Court sentenced Petitioner to life imprisonment without the possibility of parole pursuant to Washington's Persistent Offender Accountability Act. On February 16, 2006, Petitioner filed a Petition For Writ of Habeas Corpus in this Court challenging his 2002 Spokane County conviction. (ECF No. 1). His petition was dismissed on December 23, 2008. (ECF No. 41).

1 On January 8, 2009, Petitioner appealed from the District Court's  
2 decision. (ECF No. 43). On July 26, 2011, the Ninth Circuit reversed  
3 the District Court finding it had erred by ruling that Petitioner's  
4 *Brady* claim had been exhausted and by concluding the *Brady* claim was  
5 procedurally defaulted. (ECF No. 67). The Ninth Circuit remanded the  
6 matter to the District Court to address whether the case should be  
7 stayed to afford Petitioner an opportunity to exhaust the claim in  
8 state court through a personal restraint petition and to determine  
9 whether the *Brady* claim is procedurally forfeited on other grounds.  
10 (ECF No. 67 at 4-5).

11 On March 27, 2012, the Court dismissed the remanded *Brady* claim  
12 because Petitioner had not properly exhausted the claim and procedural  
13 default prevented Petitioner from doing so. (ECF No. 104).  
14 Petitioner now moves for reconsideration of that order. (ECF No.  
15 105).

#### 16 **DISCUSSION**

17 Petitioner argues that reconsideration is appropriate in light of  
18 the Supreme Court's recent decision in *Martinez v. Ryan*, 566 U.S. \_\_\_,  
19 2012 WL 912950 (Mar. 20, 2012).

20 Reconsideration is available under Rule 60(b) upon a showing of  
21 (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly  
22 discovered evidence; (3) fraud; (4) a void judgment; (5) a satisfied  
23 or discharged judgment; or (6) any other reason justifying relief.  
24 Fed.R.Civ.P. 60(b).

25 In *Martinez*, the Supreme Court has changed the rules relating to  
26 procedural default with respect to ineffective assistance of counsel

1 claims.<sup>1</sup> However, as admitted by Petitioner, while the claim at issue  
2 in *Martinez* was an ineffective assistance of counsel claim, the claim  
3 at issue in the instant matter is a *Brady* claim. (ECF No. 106 at 5).  
4 Contrary to Petitioner's argument that *Martinez* should apply to *Brady*  
5 claims in the same manner it applies to *Strickland* claims, the holding  
6 of *Martinez* deals strictly with ineffective assistance of counsel  
7 claims. Petitioner fails to persuade the Court that *Martinez* is  
8 applicable to *Brady* claims.

9 Petitioner has demonstrated no new or different facts or  
10 circumstances, newly discovered evidence, or mistake, inadvertence,  
11 surprise, or excusable neglect to warrant reconsideration. Nor has  
12 Petitioner established any other reason justifying relief. Petitioner  
13 thus fails to present a valid basis for the Court to reconsider its  
14 prior order dismissing the petition.

15 Based on the foregoing, **IT IS HEREBY ORDERED** Petitioner's motion  
16 for reconsideration (**ECF No. 105**) is **DENIED**.

17 **IT IS SO ORDERED.** The District Court Executive is hereby  
18 directed to enter this order and furnish copies to counsel for  
19 Petitioner and Respondent.

20 **DATED** this 23rd day of April, 2012.

21  
22 S/Fred Van Sickle  
23 Fred Van Sickle  
24 Senior United States District Judge

25 <sup>1</sup>The *Martinez* case holds that "[i]nadequate assistance of  
26 counsel at initial-review collateral proceedings may establish  
cause for a prisoner's procedural default of a claim of  
ineffective assistance of counsel." *Martinez*, 2012 WL 912950 at  
\*5.